

Chapter 6

Stakeholder, Regulator, and Tribal Nation Involvement



In developing and implementing its cleanup program, the Environmental Management program (EM), at both Headquarters and at sites, has placed a high priority on receiving input from all interested parties and incorporating revisions in response to those views into the site cleanup strategies as their development proceeds. However, responding to the variety of concerns continues to be a challenge. Congress, Tribal Nations, state and local governments, regulatory agencies, workers, environmental groups, citizen groups and advisory boards, the business community, academic institutions, and individuals all have unique perspectives and roles in the formulation of site cleanup strategies. In responding to input and feedback, the EM program has hoped to develop site strategies that fairly balance diverse and sometimes conflicting perspectives.

The June 1997 National and Site versions of *Accelerating Cleanup: Focus on 2006 Discussion Draft* were developed with the intent to identify the concerns of stakeholders, regulators, and Tribal Nations. The December 1997 *Preliminary Responses to Comments* document initially responded to the noted concerns received during the *Discussion Draft* comment period and formed the basis for continuing dialogue to further refine EM's cleanup program. Many of these concerns have since been addressed in *Paths to Closure*.

During the draft *Paths to Closure* 60-day comment period, which extended from publication in February 1998 until May 1, 1998, 39 sets of comments were received at Headquarters. EM identified over 260 individual comments on various facets of the report and grouped them into 13 categories: Relationship of *Paths to Closure* to Decision-making, Budget, Compliance, Contingencies, End States/Stewardship, Safety and Health, Data Quality, Waste and Materials Disposition, Transportation, Enhanced Performance, Privatization, Technology Development, and Public Participation.

The following subsections of this chapter discuss the comments received in these categories that are relevant to the cleanup program. EM intends to send out individual letters to respond to more specific comments not addressed in this chapter. Additional copies of this report can be obtained from the Center for Environmental Management Information at 1-800-736-3282.

6.1 Relationship of *Paths to Closure* to Decision-making

Many stakeholders and one Tribal Nation expressed concerns about the relationship between *Paths to Closure* and the processes EM uses to make specific cleanup decisions. In particular, stakeholders and the Tribal Nation are concerned that assumptions about site end states (i.e., planning end points), used to establish scope, schedule, and cost estimates for cleanup projects, will preclude their opportunities to participate meaningfully in the determination of ultimate end states for sites. In addition, several commentors expressed concern that EM did not have an integrated and stable management and cleanup approach. In response to these concerns, *Paths to Closure* contains a new section in Chapter 1 (see Section 1.3) that describes the relationship of *Paths to Closure* to EM's decision-making processes.

Comment Area	Addressed in Chapter
Relationship of <i>Paths to Closure</i> to Decision-making	1
Budget	2, 4, 5
Compliance	1, 4
Uncertainties/Contingencies	1, 4
End States/Stewardship	1, 3, E
Safety and Health	1, 4
Data Quality	5
Waste and Materials Disposition	1, 3, 5
Transportation	1
Enhanced Performance	4
Privatization	4
Technology Development	1, 4
Public Participation	6

Decisions in the EM program are driven by various statutory mandates, most notably the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). Most decisions are made at the site level (with appropriate Headquarters oversight). Other decisions are made at the Headquarters level because of their complex-wide implications. In many cases, ultimate decision-making authority, in the sense of final approval authority, resides with EPA or state regulators.

Public participation is an important element of the EM program's decision-making process. The National Environmental Policy Act (NEPA) requires federal agencies to consider the environmental impacts of their proposed actions. NEPA also requires that the public be informed of, and have an opportunity to comment on, major federal actions significantly affecting the environment. Consistent with its obligations under NEPA, the EM program

performs an appropriate level of environmental review in connection with its projects, with opportunities for public involvement. For projects managed under CERCLA, EM relies on the CERCLA process to incorporate NEPA values.

Paths to Closure outlines EM's current estimate of the scope, schedule, and cost for each site to complete the cleanup program. The estimate includes projects for which key site cleanup decisions have been made pursuant to CERCLA, RCRA, or other statutes, and projects where such decisions have yet to be made. Where decisions have not yet been made, sites make **assumptions** (e.g., site planning end states) about how those cleanup actions might be carried out so that sites can define work and develop schedule and cost estimates. In those cases where decisions have not yet been made, the Environmental Management program will follow the decision-making processes called for by the relevant statutory authority that governs the activity in question (e.g., CERCLA or RCRA) with appropriate environmental review.

Paths to Closure also includes cost estimates for federal salaries, investments in science and technology development, and miscellaneous support functions. EM sites and EM Headquarters make decisions through the budgetary process on the scope and pace of work for these activities.

Stakeholders and Tribal Nations will have significant opportunities to participate in all decision-making processes.

6.2 Budget

Based on a review of the draft *Paths to Closure*, stakeholders voiced a concern that the funding assumptions used to develop the document exceed current budget projections. As a result, stakeholders felt that current budget projections would not be sufficient to accomplish EM's cleanup mission as it is outlined in *Paths to Closure*. In addition, stakeholders noted that EM should be diligent in its efforts to request adequate funding to meet compliance agreements and maintain the safety and health of workers, the public, and the environment. Stakeholders also were concerned that EM seek stable funding for sites.

EM realizes the necessity of matching planning dollars with funding levels. *Paths to Closure* provides a funding guideline of \$5.75 billion per year for the entire EM program, starting in FY 1999. This figure was set in October 1997, *prior to DOE receiving its FY 1999 and outyear budget targets from the President*. It was essential to establish a funding profile at that time in order to produce this report on schedule. In some cases, sites exceeded the \$5.75 billion funding guideline in order to meet compliance commitments. Further discussion of EM's funding assumptions can be found in Chapter 4.

EM directs sites to request sufficient funding to meet applicable environmental requirements in accordance with Executive Order 12088. Specifically, during the annual budget process, EM asks sites to identify funding requirements to meet compliance agreements, court orders, settlement agreements, consent decrees,

and federal, state, and local statutes and regulations. EM is continually working with the Office of Management and Budget (OMB) and Congress to demonstrate the need for adequate funding including sufficient resources to meet compliance needs. EM uses a systematic process to reduce overall life-cycle costs:

- Constantly seeking ways to enhance performance;
- Requesting additional funding and/or considering reallocation of funds among sites to address immediate health and safety needs;
- For small funding differences, using funding available for other EM programs at a site to address compliance-related project scope; and
- For larger funding differences, working with OMB to seek additional funds, and working with stakeholders, regulators, and Tribal Nations to review sites' environmental activities to reach agreement on site programs that balance many competing priorities and needs.

Chapter 4 presents an additional discussion of enhanced performance.

6.3 Compliance

In addition to the concern discussed in Section 6.2 that EM would not be able to meet its regulatory obligations given current budget projections, stakeholders expressed concerns that EM might sacrifice compliance or health and safety in order to achieve enhanced performance goals and accelerated cleanups and closures.

The first step in EM's budget formulation process is to identify the funds necessary for full compliance. Although reducing costs through productivity improvements continues to be pursued as a means of accelerating closures and maintaining compliance under lower funding scenarios, enhanced performance savings are only captured in site baselines once a clear plan for implementation has been developed. As stated before, EM will not sacrifice compliance to achieve enhanced performance or accelerated closure dates.

6.4 Uncertainties/Contingencies

The long-range planning and unique processes involved in cleaning up DOE sites necessarily involve reliance upon some assumptions. Many of the comments expressed a general concern that the key assumptions outlined in Chapter 1 and the uncertainty that they hold with respect to future cleanup activities are not being adequately accounted for in program planning. Stakeholders are concerned that EM is not conducting enough contingency planning with respect to major assumptions. Also, EM received many comments that there is uncertainty in cost and schedule estimates resulting from project-specific assumptions.

While detailed contingency plans have not been developed for all of the key assumptions, the potential impacts have been evaluated at a high level. At this time, EM has chosen to not expend the substantial resources that would be needed to develop detailed contingency plans given that the current assumptions appear reasonable. Implicit in this approach is the assumption that sites conduct appropriate contingency planning in the event that there is a funding shortfall.

With respect to project-specific assumptions, each site selected the level of contingency included in each project. Sites have used the best available information to develop cost and schedule estimates, and any future changes in planning assumptions (e.g., changes in scope, end state, cleanup approaches, etc.) will be reflected in future revisions to *Paths to Closure*. EM recognizes the variability with respect to contingency planning among and within projects. As baselines improve over time through validation efforts, greater consistency in contingency planning will be achieved. One method for identifying potential areas of uncertainty at the national level is the use of programmatic risk scores. The programmatic risk scores, as discussed in Chapter 3 and Appendix E, help to focus management attention on possible areas of uncertainty where further contingency planning may be warranted. In future versions of *Paths to Closure*, EM will consider the impact of safety on the programmatic risk score.

6.5 End States/Stewardship

Numerous comments were received from stakeholders and one Tribal Nation regarding EM's end state assumptions and the plans for sites once EM's cleanup mission is completed. Stakeholders viewed the inclusion of assumed end states in the draft *Paths to Closure* as a positive addition to each site's cleanup strategy. However, many of the comments reiterated a concern that end state assumptions have not been approved in accordance with regulatory requirements and stakeholder agreements. Other comments expressed concern over the lack of comprehensive plans or cost estimates for the long-term monitoring and stewardship that will be required at many of the sites subsequent to EM cleanup.

As discussed in Chapter 1, in Section 1.3, the defining of end states is an ongoing process. Establishing a *planning* end state allows the sites to develop a description of the work scope, cost estimates, and schedule for the site's cleanup. These assumed end states may or may not be the ultimate end states. EM maintains that current assumptions about end states do not preclude future change resulting from changes in site planning assumptions, improved technology, increased cost efficiencies, the availability of additional resources, and/or changes in stakeholder and Tribal Nation interests.

EM acknowledges the need for more comprehensive plans addressing its role at sites once the cleanup mission has been achieved. The initial focus had been on developing baselines to address the estimated costs associated with the major cleanup work scope such as environmental restoration, waste treatment/

storage/disposal, deactivation, decommissioning, and materials stabilization. With baselines now improving, an increased focus will be placed on assessing long-term stewardship needs and formulating plans for post-closure activities at the sites. Some sites have already developed these estimates which are currently reflected in their baselines. EM plans to continue its studies in this area, and provide estimates of costs and plans for long-term stewardship across the complex in the next version of *Paths to Closure*. A companion report to *Paths to Closure*, *Moving from Cleanup to Stewardship*, is also being developed to address the scope, schedule, and cost of DOE's stewardship activities. This report will aim to clarify cleanup goals and long-term stewardship intentions.

6.6 Safety and Health

Stakeholders have expressed concern that EM's emphasis, as reflected in the draft version of *Paths to Closure*, has shifted away from mitigating safety and health risks toward accelerating cleanup. Stakeholders fear that the safety and health of workers, the public, and the environment has been, or may be, compromised so that other goals such as enhanced performance may be accomplished.

EM remains committed to its policy to "Do Work Safely or Don't Do It!" and continues to include safety and health concerns as an integral part of project planning. In fact, the primary mission of the EM program is to reduce threats to safety and health posed by contamination and waste at DOE sites. The protection of workers, the public, and the environment is a factor included in the planning of each project. EM is a leader in Integrated Safety Management (ISM), an approach that incorporates safety and health concerns into project planning. Efforts will continue to focus on integration of the Department's overall ISM system and individual projects to ensure that cross-cutting facility and worker safety and health issues are addressed in a consistent and effective manner. Chapter 1 discusses the integration of safety and health throughout EM's program in greater detail.

EM does not view its goal of accelerated cleanup as being in conflict with its goal of maintaining safety and health standards. The philosophy behind *Paths to Closure* is to focus programmatic priorities on the safe, compliant acceleration of cleanup and site closure. EM will continue to seek productivity improvements, without jeopardizing health and safety standards.

6.7 Data Quality

EM received numerous comments from stakeholders who felt that the draft *Paths to Closure* had made significant strides in the extent and clarity of data presented. Stakeholders found the addition of the Conceptual Summary Disposition Maps and programmatic risk tables to be especially insightful. However, several stakeholder comments still expressed concerns over the quality of the data, noting inconsistencies and gaps in the level of detail provided.

EM has actively sought to improve the quality of data throughout *Paths to Closure*. The alignment of information presented in *Paths to Closure* with site baselines is a major step toward improving data quality. The iterative nature of the process has also led to improved data quality, and each subsequent update should be better. As an example of this effort to improve data quality, EM has improved the quality of the data contained in waste and material disposition maps. In order to mitigate data discrepancies in disposition maps, EM is taking an iterative approach to refine the information (see Section 6.8).

In conjunction with the evolution of *Paths to Closure*, EM has implemented a more comprehensive management system, the Integrated Planning, Accountability, and Budgeting System (IPABS). As further explained in Chapter 5, IPABS will integrally link the planning, accountability, and budgetary functions to achieve a higher degree of data quality and data consistency.

6.8 Waste and Materials Disposition

With respect to EM's waste and materials disposition data, many stakeholder comments focused on the newly added disposition maps. As mentioned above in the Data Quality section, most stakeholders viewed the disposition maps as a positive addition and made some suggestions for further refinements. However, many stakeholders expressed concern over the assumptions used in developing the disposition maps, especially with respect to intersite transfers. Several comments also advocated that plans for addressing newly-generated waste be developed and included in *Paths to Closure*.

Improving waste and materials disposition data was augmented in response to comments received on the *Focus on 2006: Discussion Draft*. EM developed a process of collecting data to communicate assumptions for managing waste and materials at each site in the complex. Based on the data collected, disposition maps were generated to reflect the current waste management assumptions at sites and to provide a look across sites. One clear benefit has been that disposition maps have catalyzed the necessary dialogue between sites regarding potential intersite transfers. By incorporating stakeholder comments and performing additional data collection, EM anticipates further refinement of waste and materials data leading to an even more effective tool for complex-wide communication, reporting, and analysis.

It is important to note, however, that disposition maps are not decision-making tools; they simply depict baseline planning assumptions. As decisions are made (through the processes described in Chapter 1) disposition maps will be refined to reflect any planning changes.

With respect to newly-generated waste, EM is assuming that generators will be financially responsible for managing and disposing of wastes appropriately. This transfer of responsibility has already been implemented at some sites and is expected to increase as FY 2000 approaches.

6.9 Transportation

Most of the comments received regarding transportation expressed a concern that EM has not fully developed and shared its transportation plans. Without comprehensive plans for the transport of waste, some stakeholders question the validity of assumed shipments discussed in the draft *Paths to Closure*. In addition, some stakeholders feel that transportation decisions have not given adequate weight to the risks involved in transporting certain types of waste.

EM recognizes the degree to which *Paths to Closure* relies on intersite transport of waste and materials to accomplish its goals. Although transportation issues have not been specifically addressed in this *Paths to Closure* report, they are an integral part of each site's decision-making process. A recently established Executive Steering Committee on Transportation is working to address transportation issues. In addition, EM has begun transportation systems engineering and anticipates providing more substantive information regarding complex-wide transportation in the 1999 version of *Paths to Closure*.

6.10 Enhanced Performance

Some stakeholders support EM's strategies to accelerate closures through enhanced performance, and advocate that EM continue to formulate strategies to achieve productivity improvements. Some stakeholders were nevertheless concerned that the adoption of enhanced performance techniques may lead to compromises in other facets of EM's cleanup mission in order for the underlying goals of acceleration and cost reductions to be achieved.

The enhanced performance savings reflected in baselines represent only those savings for which a feasible strategy has been adopted. EM views enhanced performance as a prudent management tool, and will continue to promote the development and employment of sound strategies to achieve productivity improvements. Chapter 4 provides a detailed discussion of EM's enhanced performance strategies and expectations.

6.11 Privatization

EM's promotion of privatization has been criticized due to a lack of data to support the hypothesis that enhanced performance will result from its employment. Many stakeholders questioned the merits of privatization which they claim has not been as successful in all cases as had been anticipated. Concerns were expressed that *Paths to Closure* continues to promote privatization despite evidence that it is not necessarily a means of reducing costs.

Currently, EM continues to support privatization strategies as a means to reduce risks and costs. Privatization as used in this context refers to a particular method of financing, contracting, and risk-sharing with the private sector for goods and services. In using privatization, EM is relying on market forces to set prices through competition for fixed-price contracts.

6.12 Technology Development

Many stakeholders see the potential for EM to enhance its performance through the adoption of new technologies, and encourage more investment in the development of feasible deployment strategies.

One of EM's enhanced performance strategies relies on the identification of areas where technological advancements would have the most beneficial impact on costs and schedule. The *Paths to Closure* process has identified projects and activities where new technologies have the most potential for reducing costs or accelerating schedules. With this information, EM will be able to target its resources for technology development where they will be most effective.

6.13 Public Participation

Some stakeholders feel that EM has addressed their comments and concerns in *Paths to Closure*. Yet, there remains room for more progress in carrying out EM's goals to incorporate stakeholder comments in the formulation of its cleanup program. Some stakeholders feel that certain areas of concern have not received appropriate response from EM. Other stakeholders feel that more opportunities for public involvement should be provided.

As discussed in Chapter 1, public participation is a crucial component in EM's successful completion of its cleanup program. Comments submitted are viewed as valuable feedback and guidance as the process of creating site strategies evolves into a sound cleanup program. EM has attempted to address most of the stakeholder comments received in response to the draft *Paths to Closure* document either through explicit changes incorporated in this version of *Paths to Closure* or in the discussion in this chapter. EM also plans to send to each commentor an individual letter, which will respond in greater detail to specific comments. The public's concerns will continue to be addressed in the ongoing development of the next version of *Paths to Closure*.

Many comments received were noted to be specific to the conditions at individual sites. Because each site has unique issues to resolve and decision-making occurs predominantly at the site level, most of these comments will be addressed in each site's *Paths to Closure* report.